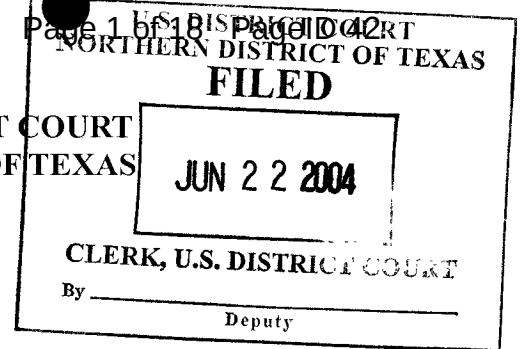


ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



JAMES PAPA

Plaintiff,

v.

**ROBERT FEINSTEIN d/b/a
RF VIDEO**

Defendant

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CIVIL ACTION NO. 304CV-299-N

**SECOND AMENDED COMPLAINT
AND REQUEST FOR PRELIMINARY INJUNCTION**

Plaintiff **JAMES PAPA** files this Complaint against Defendants **ROBERT FEINSTEIN d/b/a RF VIDEO** and **RF VIDEO INC.**

1. PARTIES

1A. Plaintiff **JAMES PAPA** is an individual who resides in Irving, Dallas County Texas and is presently before the Court as a result of prior pleadings and no additional service of process is necessary at this time.

1B. Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO** is an individual and is president of RF Video, Inc. and is presently before the Court as a result of prior pleadings and no additional service of process is necessary at this time.

1C. Defendant **RF VIDEO, INC.** is a Pennsylvania Corporation and may be served by delivering process to its President Robert Feinstein at 865 Green Ridge Circle, Langhorne, Pennsylvania 19053.

2. JURISDICTION

2A. This Court has jurisdiction under 28 U.S.C. §§1331, 1338(a), and 1338(b) as this case raises a Federal question in that this is an action for copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., §§ 101 et seq. and the Lanham Act, 15 U.S.C. §1125(a), as hereinafter more fully appears.

2B. Plaintiff **JAMES PAPA** is a citizen of the State of Texas, and Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO** is a citizen of the State of Pennsylvania and Defendant **RF VIDEO, INC.** is a Pennsylvania corporation.. The matter in controversy exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars (\$75,000.00).

3. VENUE

3A. The claims asserted herein arose in this judicial district and Defendants do business in this judicial district. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

4. FACTS

4A. Plaintiff **JAMES PAPA** has been engaged in the business of marketing and promoting professional wrestling. In the course of his business Plaintiff has created several trademarks as well as written numerous original musical works subject to common law copyright. Over the past twenty years, Plaintiff has created substantial goodwill and public trust in his marks and musical works.

4B. Plaintiff began using the trademark "Freebirds" in association with professional wrestling in 1984.

4C. Plaintiff began using the trademark “Bad Street USA” in association with professional wrestling in 1983.

4D. Plaintiff has written the lyrics, composed the music and produced the recording of numerous musical works. These works were used as “introduction” or “entry” music by numerous professional wrestlers. Such works were subject to common law copyright and include:

- (1) *Don't Step to Ron*;
- (2) *Man Called Sting*;
- (3) *Mr. Bang Bang*;
- (4) *Master of the DDT*;
- (5) *Freebird Forever*;
- (6) *Simply Ravishing*;
- (7) *Johnny B. Badd*;
- (8) *The Natural*;
- (9) *The Dragon*;
- (10) *He's Smokin'*;
- (11) *Steinerized*.

4E. Plaintiff has written the lyrics, composed the music and produced the recording of numerous musical works. These works were used as “introduction” or “entry” music by numerous professional wrestlers. Many of these works were registered with Broadcast Music Incorporated, from whom Plaintiff receives royalties and include:

- (1) *Everything is Allright*;
- (2) *When the Love Comes Down*;
- (3) *The Night You Can't Remember*;
- (4) *Ain't Superstitious*;
- (5) *Touch My Level*;
- (6) *Boys are Back in Town*;
- (7) *Blue Jean Queen*;
- (8) *Heartbeat Away*; and
- (9) *Badstreet U.S.A.*

4F. In addition to writing the lyrics, composing the music and producing the recording for *Badstreet U.S.A.* the Plaintiff produced, in 1983 an original music video based on the song.

4G. Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO** is the owner of an internet web site, www.RFVideo.com, that specializes in selling various materials centered around professional wrestling. Among the products offered on Defendant's website are a large number of videos in which professional wrestling bouts are shown. These matches begin with each wrestler entering the ring to his "introduction" music. Many of Plaintiff's original musical creations were licensed to these wrestlers for their live performances as well as the televised versions. Examples of Defendant's websites featuring copyrighted materials belonging to Plaintiff are attached as "**EXHIBIT A**". No license was ever granted to Defendant to reproduce these recordings for sale or otherwise.

4H. In the alternative Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO** is the President of Defendant **RF VIDEO, INC.**, and Defendant **RF VIDEO, INC.** is the owner of an internet web site, www.RFVideo.com, that specializes in selling various materials centered around professional wrestling. Among the products offered on Defendant's website are a large number of videos in which professional wrestling bouts are shown. These matches begin with each wrestler entering the ring to his "introduction" music. Many of Plaintiff's original musical creations were licensed to these wrestlers for their live performances as well as the televised versions. Examples of Defendant's websites featuring copyrighted materials belonging to Plaintiff are attached as "**EXHIBIT A**". No license was ever granted to Defendant to reproduce these recordings for sale or otherwise.

4I. In addition to the unlicensed reproduction of Plaintiff's common law and registered copyrighted musical material, Defendants' website offers for sale numerous videos in which a major selling point is the inclusion of bouts by professional wrestlers

known as the “Freebirds”. These wrestlers were managed by Plaintiff and the name “Freebirds” was created by Plaintiff and first used by Plaintiff in his promotional efforts in 1984.

4J. Defendants also offer for sale numerous products using the Plaintiff’s trademark “Bad Street USA”.

4K. Defendants are not privileged to reproduce any of the copyrighted materials belonging to Plaintiff. Nor are they privileged to use any trademark belonging to Plaintiff. Defendants have not sought license or permission to offer any of the above listed copyrighted or trademarked materials for sale.

4L. The infringement of Plaintiff’s trademarks and copyrighted materials is causing Plaintiff irreparable harm.

4M. Plaintiff has performed all conditions precedent required for recovery in the instant action.

5. CAUSE OF ACTION 1: COPYRIGHT INFRINGEMENT

5A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked “1” through “4”, as if more fully set forth at length herein.

5B. Upon information and belief the Defendants had access to Plaintiff’s work via licensed television broadcast.

5C. The music, lyrics and video contained in the video recordings offered for sale by Defendants copy the original expression of the above listed music, lyrics and video written, performed or produced by Plaintiff and therefore infringe Plaintiff’s copyright in said music, lyrics and video.

5D. Defendants have infringed on Plaintiff's copyright by copying Plaintiff's music, lyrics and video and producing and distributing videotapes containing Plaintiff's music, lyrics and video without Plaintiff's permission.

5E. By reason of Defendants' acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendants in connection with his manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

6. CAUSE OF ACTION 2: CONTRIBUTORY COPYRIGHT INFRINGEMENT

6A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked "1" through "5", as if more fully set forth at length herein.

6B. Upon information and belief, Defendants used and copied Plaintiff's music without Plaintiff's permission.

6C. Upon information and belief, Defendants used and copied Plaintiff's lyrics without Plaintiff's permission.

6D. Upon information and belief, Defendants used and copied Plaintiff's video without Plaintiff's permission.

6E. Upon information and belief, Defendants' use of the music, lyrics and video and copying of Plaintiff's music, lyrics and video was done so that Defendants would be able to take over, for their own profit and advantage, Plaintiff's music, lyrics and video.

6F. Upon information and belief, Defendants induced, participated, and aided and abetted in, and profited from, the copying of Plaintiff's music, lyrics and video.

6G. By reason of the foregoing copying, Defendants copied or aided and assisted in the copying and performing of Plaintiff's music, lyrics and video in various media without permission of Plaintiff, which is an infringement of Plaintiff's copyright.

6H. By reason of Defendants' acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendants in connection with his manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

7. CAUSE OF ACTION 3: LANHAM ACT VIOLATIONS

7A. Plaintiff repeats and reiterates each and every allegation of paragraphs of the Complaint marked "1" through "6", as if more fully set forth at length herein.

7B. By reason of the foregoing, Defendants failed to designate Plaintiff as the author of Plaintiff's music, lyrics and video in advertising and publicizing.

7C. Upon information and belief Defendants' actions promoting video recordings containing music, lyrics and video created by Plaintiff without crediting Plaintiff as the author of the music, lyrics and video constitutes unfair competition under the legal doctrine of passing off.

7D. By reason of the foregoing, Defendants have willfully and intentionally caused damage to Plaintiff by affixing and using in commerce such false descriptions or representations in violation of Plaintiff's rights under Section 43(a) of the Lanham Act, 15 U.S.C. s 1125(a).

7E. By reason of Defendants' acts of copyright infringement, Plaintiff is entitled to recover all profits received or otherwise achieved, directly or indirectly, by Defendants in connection with their manufacturing, importing, advertising and sales of the accused products which are copies of Plaintiff's works.

8. REQUEST FOR PRELIMINARY INJUNCTION

8A. Defendants' conduct has caused and is causing Plaintiff incalculable harm. Plaintiff seeks a preliminary and permanent injunction to halt Defendants' use of Plaintiff's trademark and copyrighted materials.

9. REQUEST FOR RELIEF

9A. With respect to Plaintiff's Request for Preliminary Injunction Plaintiff asks the Court:

- (1) For an order preliminarily and permanently enjoining the Defendants, and their agents, servants, attorneys, and employees and all other persons acting in concert with him from committing any further acts of infringement, including but not limited to, copying, manufacturing, importing, advertising, selling and distributing the accused products, or aiding or abetting or assisting others in such infringing activities;
- (2) For an order directing Defendants to file with this Court and to serve on Plaintiff within thirty (30) days after service on Defendants of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction and order of the Court;
- (3) For an order seizing and impounding all Accused Products;
- (4) For an order requiring Defendants to account to Plaintiff for all profits derived by Defendants from the manufacture, importation, advertisement and sale of Accused Products.
- (5) For a judgment of damages against Defendants in an amount to be proven at trial or in the alternative a reasonable royalty, and for prejudgment and post-judgment interest until the award is fully paid;
- (6) For a judgment that Defendants have willfully and deliberately infringed Plaintiff's rights, and that this is an exceptional case entitling Plaintiff to enhanced damages; and
- (7) Attorney fees as available under the Copyright Act, 17 U.S.C. §§ 101 et seq.

9B. With respect to Plaintiff's requests for relief Plaintiff asks the Court:

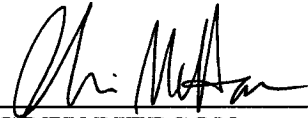
- (1) For an order awarding actual damages;
- (2) For an order awarding exemplary and punitive damages;
- (3) That Plaintiff be granted costs, disbursements, and reasonable attorney fees;

- (4) That Defendants account to Plaintiff for their profits and any damages sustained by plaintiff arising from the foregoing acts of infringement and false representation;
- (5) That in accordance with such accounting, Plaintiff be awarded judgment for three times such profits and damages pursuant to 15 U.S.C. §1117;
- (6) For such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint.

Respectfully submitted,



GREY PIERSON

State Bar No. 16002500

CHRIS MCHAM

State Bar No. 24041447

Pierson Behr, Attorneys

301 Abram Street

Arlington, Texas 76010

Voice: (817) 265-7771

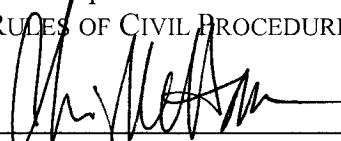
Fax: (817) 861-9008

Attorneys for Plaintiff

Dated June 18, 2004

CERTIFICATE OF SERVICE

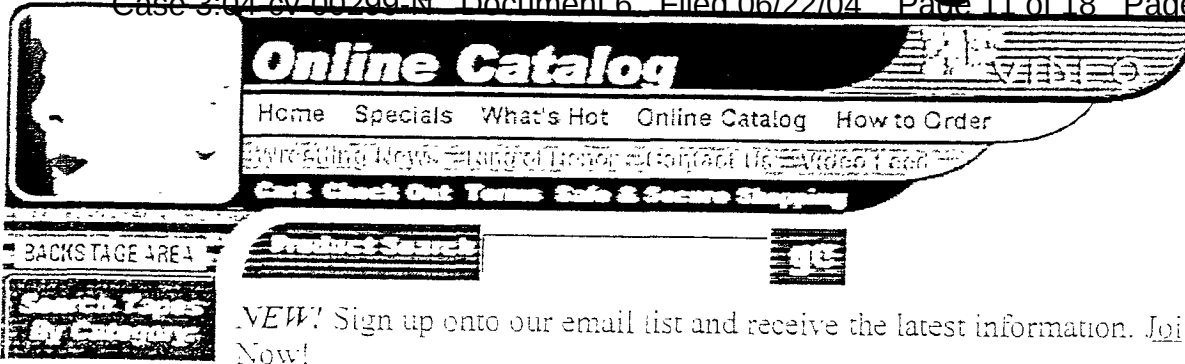
I hereby certify that the foregoing has been served on all counsel of record and all *pro se* litigants by transmitting a true copy of same to such persons via first class mail, properly addressed, or via fax pursuant to the TEXAS RULES OF CIVIL PROCEDURE on this date, June 18, 2004.



CHRIS MCHAM

Exhibit A

(Defendant's websites)



Online Catalog

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Cart Check Out Terms Safe & Secure Shopping

Product Search

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New Releases

Best of Kevin Sullivan (early years)

30 ECW
Commercial
Videos

Item Id: 1013

Price : \$12.00

Best Of...

Classic
Collection

1. Sullivan interview, Freebirds come out and argue, this was a great angle
2. Sullivan & Mike Davis vs Freebirds (Austin Idol shows up late)
3. Great interviews and angles with Idol. Sullivan & Freebirds
4. Sullivan vs. Steve Keim (Sullivan turns heel)
5. Sullivan vs. Terry Taylor
6. Sullivan vs. Tony Atlas
7. Tons of Sullivan clips of all his major feuds in Florida, this is a must see if you never have seen him at his best, tons of gimmich matches are on this, it is a classic tape.

Clearance
Merchandise

Cult Classic
Movies

Quantity

CZW

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DVD's

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ECW

ECWA

Extreme Music

Gift
Certificates

Goldmine

IWA Mid-South

IWC

Japan

Japanese
Merchandise

Wrestling

Wrestling

Wrestling

Wrestling

Phoenix
Championship
Wrestling

PWF

Ring of Honor
Merchandise

Ring of Honor
Tickets

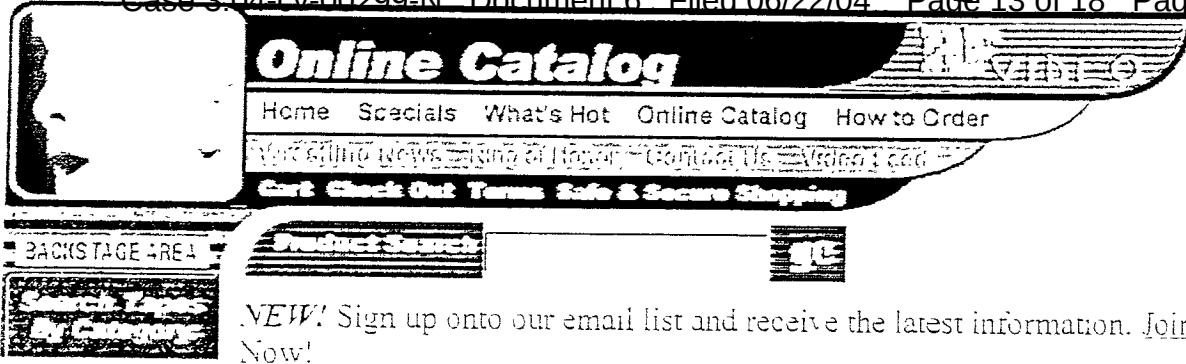
Shoot
Interviews

USA PRO/CW

Various
Promotions

Wrestling
Vixxxens





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Viewing News Rising of Hagar - Confrontation Video Catalog

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New Releases

old florida

30 ECW
Commercial
Videos

Item Id: 103

Price : \$12.00

Best Of...

Classic
Collection

1. Interview with the Freebirds (Mid Atlantic)
2. Dusty vs. One Man Gang
3. Interview with Gang/Dusty/Kevin, Oliver & Graham
4. Sullivan in Lakeland ring, interview with Sullivan, Oliver & Graham
5. Dory, Billy & Jack & Dusty interview

Clearance
Merchandise

6. Dory vs. Mike Rotunda
7. Mulligan & OMG/Bass, Humperdink & Graham/Dusty interviews
8. Dusty vs. Flair (for a ring)

Cult Classic
Movies

9. The Dream vs. Dennis Brown (The Dream is funny, his gimmick is an impersonation of Dusty)
10. Chavo & Hector vs. Scott McGee & Mike Graham

CZ/W

11. Hump & Saint/Flair interviews
12. Flair vs. McGee

DVD's

13. Billy Jack/D. Funk/BJ Mulligan interviews
14. OMG & Pez Whatley vs. Black Bart & Ron Bass
15. Hump, Graham, Sullivan & Bass interview

ECW

16. Bass vs. McGee
17. OMG & Mulligan/Sullivan & Hump interviews

ECWA

18. Bobby Eaton & Dennis Condry vs. Stagger Lee & Bill Watts (3 different matches)

Extreme Music

19. Mr. Wrestling II & Magnum T.A. vs. Eaton & Condry
20. Gordy vs. Kamala
21. Flair vs. Hayes

Gift
Certificates

22. Blackwell & Patera vs. Lawler & BJ Mulligan
23. Highlights of Cornette - Watts feud.

Goldmine

Quantity: [Add to Cart](#)

IWA Mid-South

IWC

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Japan

Japanese
Merchandise

As of 4/1/04

Homecoming

Merchandise

Wrestling

Pro Wrestling
Championship Wrestling

PWF

Ring of Honor
Merchandise

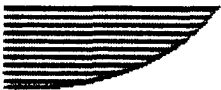
Ring of Honor
Tickets

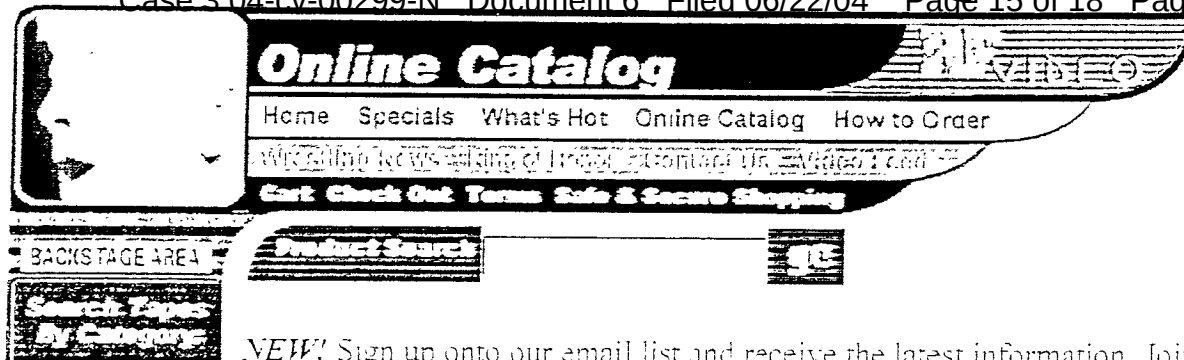
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Interviews

USA PRO/ICW

Various
Promotions

Wrestling
Vixxxens





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New Releases

33 ECW
Commercial
Videos

Best Of...

Classic
Collection

Clearance
Merchandise

Cult Classic
Movies

CZW

DVD's

ECW

ECWA

Extreme Music

Gift
Certificates

Goldmine

IWA Mid-South

IWC

Japan

Japanese
Merchandise

best of all promotion's

Item Id: 110

Price : \$12.00

1. Jake Roberts and Dick Slater confrontation. Ja, ke DDT's Dark Journey and the crown hoes wild (NWA Mid-South 1986)
2. Jim Duggan interview, Jim shows his 2X4 collection (10/85 NWA Mid-south)
3. Buzz Sawyer, Masked Superstar & Dck Murdoch vs. Ted DiBiase, Steve Williams & Jim Duggan, the real Masked Superstar interfers (1986 Mid-south)
4. Tom McGee's incredible ring entrance (1986 Japan)
5. NWA Champ Ric Flair vs. Lex Luger, 2 out of 3 falls. Luger pins Flair in the first fall and then gets destroyed by every heel in the building
6. Kareem Mohammed & Bruiser Brody vs. Jerry & Bill Dundee (1985 NWA Memphis)
7. Jesse Ventura vs. Jimmy Valiant. Cadillac match (1983 NWA Toronto)
8. AWA Tag Champs Greg Gagne & Jim Brunzell vs. Jerry Blackwell & Sheik Adnan El-Caissey (1981 AWA Winnipeg)
9. Gagne vs. Blackwell (1981 AWA Winnipeg)
10. Sgt. Tomko and Dean Ho confrontation Dean Ho interview (1981 Vancouver)
11. Dean Ho & Igor Volkoff vs. Bruiser Costas & Terry Costas & Adonis interview (1981 Vancouver)
12. Ho & Volkoff, Moose Morowski vs. Adonis, Sgt. Tomko & Costas, steel cage, Costas and Tomko turn on Adonis (1981 Vancouver)
13. Jack Brisco and Roddy Piper confrontation, Piper & Ivan Koloff kick the hell out of Brisco and Tim Horner (1981 NWA Mid-Atlantic)
14. Costas vs. Adonis (1981 Van.)
15. Costas vs. Adonis, Hair vs. Hair (1981 Van)
16. Entertainment Tonight: Feature on Georgia Championship Wrestling (1982 CBS)
17. Jerry Lawler vs. Hulk Hogan, Lawler enters the arena on a horse (1979 NWA Memphis)
18. Killer Kowalski on The Tomorrow Show with Tom Snyder (198 NBC)
19. Skandar Akbar introduces Mr. X whis is Killer Kahn, Michael Hayes protests and gets whupped by Devestation Inc. Hayes & Gordy vow revenge Link & Kahn vs. Kerry & Kevin. Hyes & Gordy jump Link & Kahn during match, setting up a three way confrontation (7/84 NWA World Class)
20. Freebirds vs. Von Erichs, Bad Street Tornado match. wild and bloody with tons of action (7/84 World Class)

Quantity

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[Merchandise](#)

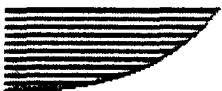
[Ring of Honor](#)
[Tickets](#)

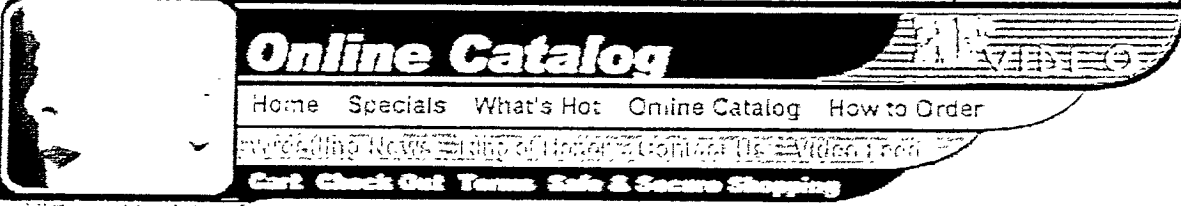
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New Releases

AWA--World Class--NWA 89

33 ECW
Commercial
Videos

Item Id: 138

Price : \$12.00

Best Of...

Classic
Collection

Clearance
Merchandise

Out-Classic
Movies

CZW

DVD's

ECW

ECWA

Extreme Music

Gift
Certificates

Goldmine

AWA Mid-South

NWC

Japan

Japanese
Merchandise

1. Ken Patera & Brad Rheingans vs. Bad Co (title change)
2. Olympions/Bad Co. interviews
3. Missing link video
4. Lance Von Erich vs. Gino Hernandez (Gino is wearing a mask)
5. Lance vs. Killer Brooks (Lances debut match)
6. OMG vs. Kamala (5th Annual Thanksgiving Day)
7. Jack Victory vs. Brian Adidas
8. Casey & Sunshine vs. Tatum & Missy (cage, Texas Death, Kabuki comes in)
9. Dynamic Duo vs. Derry & Kevin (Gordy is ref in cage)
10. Rick Rude vs. Iceman King Parsons
11. Clip of the Oldies Dinner
12. Midnight Express vs. Samoan Swat Team
13. Great Muta vs. Steve Casey
14. Butch Reed vs. Junk Yard Dog
15. Bob Orton vs. Dick Murdoch
16. Mike Rotunda & Steve Williams vs. Road Warriors (title change)
17. Iron Sheik vs. Ranger Ross
18. Ric Flair interview
19. Dan Spivey & Sullivan vs. Steiner & Gilbert
20. Flair vs. Steamboat (2 out of 3 falls)
21. Freebirds vs. Lance, Kevin & Kerry Von Erich
22. Steve Simpson vs. Rick Rude
23. Bruiser Brody & Terry Gordy brawl all over the arena
24. John Tatum & Grappler vs. Fantastics
25. 1 hour special of NWA Worldwide
26. Clips of Hayes vs. Luger, Warriors vs. Varsity Club, Sting vs. Rotunda & Rip Morgan, Bob Orton incidents with Murdoch, Flair vs. Steamboat .

Quantity

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Wrestling All Pro

Wrestling Debut

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Phoenix
Dynamite
Wrestling

PWF

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Merchandise

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Tickets

Shoot
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USA PROWRESTLING

Various
Promotions

Wrestling
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